

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/04/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000019

FILED: _____

STATE OF ARIZONA

KATHY J LEMKE

v.

KEVIN L WISE

PATRICK E ELDRIDGE

FINANCIAL SERVICES-CCC
PHX JUSTICE CT-NE
REMAND DESK CR-CCC

MINUTE ENTRY

NORTHEAST PHOENIX JUSTICE COURT

Cit. No. 1928052

Charge: A. DUI ALCOHOL
B. DUI-BA .10 OR GREATER

DOB: 03/28/61

DOC: 03/03/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on May 6, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Northeast Phoenix Justice Court, exhibits and the Memoranda submitted by counsel.

Appellant, Kevin L. Wise, was arrested on March 3, 2001 and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1), Driving with a Blood Alcohol Content of .10 or Greater, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2), and two civil traffic violations which are not the subject of this appeal. Appellant filed a Motion to Dismiss alleging that he had been denied his right to an independent blood or breath test. An evidentiary hearing was held on that motion and the trial judge denied the motion on October 2, 2001. Thereafter, the parties submitted the charges to the court without a jury on the basis of departmental reports. Appellant was found guilty of the two misdemeanor charges December 17, 2001. Appellant has filed a timely Notice of Appeal in this case.

The only issue raised on appeal by Appellant is whether the trial judge erred in denying Appellant's Motion to Dismiss. Appellant urged the trial judge, and now urges this court, to dismiss the case based upon an alleged denial of his right to an independent chemical test. This Court considers Appellant's Motion to Dismiss in actuality a Motion to Suppress the results of the breath test. This Court lacks authority to reverse a trial judge's ruling on a Motion to Suppress or Dismiss without making a finding that the trial judge clearly abused her discretion.¹ When a trial judge's ruling on a Motion to Suppress is supported by substantial evidence within the record, this Court must affirm the trial judge's ruling.² And, this Court must view the facts in a light which is most favorable to

¹ State v. Morales, 170 Ariz. 360, 824 P.2d 756 (App. 1991).

² Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

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upholding the trial judge's ruling, and must resolve reasonable inferences against the Appellant.³ This Court must also defer to the trial judge's factual findings where there are conflicts within the evidence.⁴ The trial judge, as a fact finder, occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses and documentary evidence. Clearly, the trial judge in this case believed the testimony of the State's witnesses.

The trial judge's finding is supported by the record in this case. DPS Police Officer Michael L. Ransom testified that he arrested Appellant at 12:30 a.m. He also testified that he was with Appellant until 3:18 a.m. and Appellant did not ever request an independent chemical test.⁵ Deputy Madison H. Moore also testified that he works "central in-take division" at the Madison Street Jail.⁶ Deputy Moore testified about the jail's procedures when an inmate would request an independent blood test. He explained that the detention officers permit a Defendant to use the telephone to make arrangements to have someone come over to withdraw blood.⁷ Deputy Moore also testified that a logbook is maintained in the ordinary course of business at the jail where notations are made regarding any Defendant who requests an independent chemical test. Deputy Moore brought the logbook to court and the logbook reflected no request for a chemical request by Appellant, Kevin Wise.

There is clearly substantial evidence in the record to support the trial judge's denial of Appellant's Motion to Dismiss.

IT IS THEREFORE ORDERED affirming the order of the trial court denying the Motion to Dismiss.

³ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989).

⁴ State v. Plew, 155 Ariz. 44, 745 P.2d 102 (1987).

⁵ R.T. of evidentiary hearing (as transcribed by Appellant) at page 7.

⁶ Id. at page 25.

⁷ Id. at pages 27-28.

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IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Northeast Phoenix Justice Court for all further and future proceedings in this case.